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| 09/595,787      | 06/16/2000  | Drew Waters          | 108120.00001        | 3221             |

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10/06/2003

Steven Thrasher  
391 Sandhill Drive  
Richardson, TX 75080

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| EXAMINER |
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TRUONG, LINH T

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 10/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/595,787

Applicant(s)

WATERS ET AL.

Examiner

Linh Truong

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9,12,13 and 16 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,10,11,14,15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 10, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Laughlin '5,922,333.

For claim 1, Laughlin teaches a method of generating a fog with a tanning solution comprising the steps of: applying a predetermined pressure to the tanning solution and passing the tanning solution through at least two tubes and their corresponding nozzles (col. 11, lines 17-23) so that when the solution leaves the nozzles, fog is generated.

For claim 2, Laughlin teaches an orifice with a specific size of 0.6 mm (column 8, lines 39-41).

For claim 4, Laughlin teaches a method of evacuating the fog from the fog chamber (column 12, lines 30-38).

For claim 5, Laughlin teaches a method of generating a fog with a tanning solution where the tanning solution comprises a combination of two bronzers: lawsone and juglone (column 1, lines 51-53 and column 7, lines 31-35).

For claims 6 and 7, Laughlin teaches a method of generating a fog with a tanning solution where the tanning solution comprises a combination of at least one tanning solution and of at least one moisturizer (column 7, lines 55-56).

For claim 10, Laughlin teaches selecting a tanning solution.

For claim 17, Laughlin teaches a tanning system comprising an outer shell, multiple fluid frames with multiple nozzles inside the fog chamber that generates fog from fluid (fig. 11 and col. 11, lines 17-23).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '6,199,557.

For claim 20, Laughlin teaches a fan 18 for ventilation. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide a fan on the hood of the fog chamber because Applicant has not disclosed that a fan on the hood of the fog chamber provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a fan in the back portion of the fog chamber because, regardless of the location, the fan still provides ventilation.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McClain '5,664,593.

For claim 11, McClain teaches a system comprising of : a fog chamber (2), a pump system (20), a tube (48) with multiple nozzles (54, 58, and 60) in fluid communication with the fog chamber (2), and a control system (66) connected to the pump system (figures 1, 2, and 8). The control system (66) activates the fog chamber. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have at least two tubes and their corresponding nozzles because Applicant has not disclosed that at least two tubes and their corresponding nozzles provide an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with one tube with multiple nozzles at different locations because these plurality of nozzles also coat a person's body at various locations with chemicals simultaneously.

Claims 14 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over McClain '5,664,593 and in view of Laughlin '6,199,557.

For claims 14 and 15, McClain teaches a solution container coupled to the pump system but not a moisturizer solution or tanning solution container. Laughlin, however, teaches adding moisturizers to a tanning solution (column 7, lines 55-56). Therefore, it is obvious to one with ordinary skill in the art at the time the invention was made to provide the invention of McCain with a moisturizer and tanning solution container for tanned, smooth skin.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '6,199,557 and in view of Sinclair '5,810,259.

For claim 18, Laughlin teaches a nozzle 11 but does not teach a nozzle with a disk fan disposed therein. Sinclair teaches a nozzle 11 with a disk fan 14 for dispersing fluids (figure 3 and column 2, lines 24-34). Therefore, it is obvious to one with ordinary skill in the art to at the time the invention was made to provide the invention of Laughlin with a nozzle with a disk fan for the generation of fine mist.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin in view of McClain '5,664,593.

For claim 19, Laughlin does not teach a user control panel. McClain teaches a **user control** panel 66 that is located on the outside of the outer shell (figure 1). Therefore, it is obvious to one with ordinary skill in the art to provide at the time the invention was made to provided the fog chamber of Laughlin with a control panel for user selection. Also, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to place the control panel within the outer shell because Applicant has not disclosed that the specific placement of the control panel provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a control panel on the outside because the fog chamber can still be **operated by the user**.

***Allowable Subject Matter***

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8, 9, 12-13, and 16 are allowed.

***Response to Arguments***

Applicant's arguments filed 14 July 2003 have been fully considered but they are not persuasive. In response to applicant's argument that McClain (in regards to claims 11 and 14) teaches a sun tanning lotion system designed to protect the a person's skin from burning and to discourage tanning instead of creating a tan, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that there is no suggestion to combine the references in regards to claim, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re*

*Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, with respect to claim 18, and not to claims 1-7 as stated in Applicant's remarks in paper 5 because it is no longer applicable due to amended claim 1, the motivation to combine is that Sinclair and Laughlin both teach nozzles that generate mist/fog.

In regards to Applicant's argument that the control panel of McClain cannot be used by a user of a tanning system in claim 19, the Examiner traverses. Applicant does not claim the exact location that a user can access the control panel from, only if the control panel can be used by the tanning system user. Thus, the Examiner maintains all of the above rejections.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Art Unit: 3761

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is (703) 605-4974. The examiner can be normally reached on Monday through Friday from 8:00 AM-5:30 PM.

Linh Truong

*L.T.*



**WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**